



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/435,668 11/08/99 GOOSSEN

K GOOSSEN-80

MM91/1003

EXAMINER

HENRY I SCHANZER ESQ  
29 BROOKFALL ROAD  
EDISON NJ 08817

JACKSON, C

ART UNIT

PAPER NUMBER

2881

DATE MAILED:

10/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

BEST AVAILABLE COPY

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/435,668	GOOSSEN, KEITH WAYNE
	<b>Examiner</b>	<b>Art Unit</b>
	Cornelius H. Jackson	2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 July 2001.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4, 6 and 7 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4, 6 and 7 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                  4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                  5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                  6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Acknowledgement***

Acknowledgment is made that applicant's Amendment, filed on 9 July 2001, has been entered and claim 5 has been canceled.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art **Fig. 1** in view of D'errico (5,631,315) and/or Ando et al. (5,514,485). Applicant's admitted prior art **Fig. 1** teaches all the limitations stated in the preamble. Applicant's admitted prior art **Fig. 1** fails to teach a tin oxide layer adhered to the metal capping layer. D'errico, **see col. 5, line 65 – col. 7, line 40** and Ando et al. **see abstract and col. 1, line 62 – col. 2, line 16.** teaches tin oxide, as a dielectric layer(s), and its adhesive properties were well known in the art at the time the invention was made. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In regard to claims 2-4 and 6, Ando et al. teaches all the stated limitations, **see col. 16, lines 44-63.**

In regards to claim 7, Applicant's admitted prior art teaches all stated limitations, **see Fig. 1.**

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Satoh et al. (4990972) disclose a semiconductor light emitting device with a DBR layer containing alternating layers of tin oxide, **see col. 11, lines 5-11.**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cornelius H. Jackson whose telephone number is

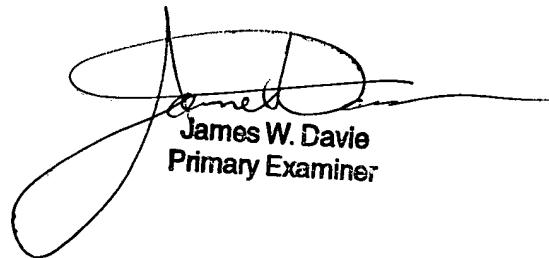
Art Unit: 2881

(703)306-5981. The examiner can normally be reached on 8:30 - 4:00, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dzierzynski can be reached on (703)308-4782. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7722 for regular communications and (703)308-7721 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

CPY  
chj  
September 22, 2001

  
James W. Davie  
Primary Examiner